Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-1743

In The

Supreme Court of the United States

October Term, 1985

TEAMSTERS LOCAL 317,

Petitioner,

-against-

CLINTON'S DITCH COOPERATIVE CO., INC. and NATIONAL LABOR RELATIONS BOARD,

Respondents.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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In its Petition, Teamsters Local 317 contended that the Court of Appeals ran afoul of important federal labor law policy and statutory strictures in concluding that the Union had waived the right to enforce a commitment by Clinton's Ditch to rehire the Local 317 drivers and continue their employment under Local 317 contract if Clinton's Ditch's arrangement with its contract trucker, Fairfield, terminated (Petition at 16-19).

In response, Clinton's Ditch contended that the issue was not properly before this Court because it had been stricken from the Union's brief to the Court of Appeals (Respondent's Brief in Opposition at 5 and 26-27).

In its Reply Brief, Local 317 pointed out that, pursuant to F.R.A.P. Rule 27(c), it had requested the Second Circuit at oral argument to reverse the action of the single judge granting the motion to strike (Reply Brief at 2). Local 317 noted that the Second Circuit had since granted Local 317's motion to transcribe that part of the oral argument (Reply Brief at 3 n.2).

The oral argument referred to above has now been transcribed and released by the Second Circuit. The transcript shows the following exchanges between Local 317's counsel and the court during the oral argument held at the Second Circuit on June 17, 1985:

> MR. LaVAUTE: Clinton's Ditch claims that the union waived its rights here and there were a number of events in the course of this history between this group of drivers and Clinton's Ditch through Fairfield that I would like to point out to the court.
>
> In each case the union reiterated its rights, would not relinquish its rights and repeated that it was not going to release Clinton's Ditch from its obligation as

the employer of these drivers, the same drivers that it had employed in the past.

In 1975, Clinton's Ditch says to the union, "We want to bring in Fairfield to supervise the trucks, basically, to handle the maintenance of the trucks." They tell the union there will be no changes. Everything will be the same. Tell the drivers at the same time, "You will always have a job with us." [Transcript of portion of oral argument, page 3.]

. . . .

Now, Judge Pratt, one more thing if I may.

The union took issue with the board here and said, since Clinton's Ditch is the joint employer, in effect, standing in the shoes of Fairfield, we argued there should have been a violation of Section 8(d) by Clinton's Ditch with respect to, in effect, terminating the collective bargaining agreement without giving the notice provision—the notice requirements under the National Labor Relations Act and also by repudiating the agreement reached with the union in 1975 as to protecting these drivers in the event Fairfield left the scene and the board did not find an 8(d) violation.

The board did not find an 8(d) violation and, Judge Pratt, you signed an order granting the board's motion to strike those portions of our brief where we argued that.

THE COURT: You did not petition to have the board's action reviewed?

MR. LaVAUTE: Well, no, we did not, but there is a Second Circuit case, the General Electric case, which is cited in our brief in this case in which this court held that a union is not entitled in this situation to cross-petition and that if it intervenes, it is entitled to raise whatever issues it wanted to raise as part of the case.

So I would request that the court reconsider that ruling.

One of the aspects of it that may make a difference is that if the court finds—

THE COURT: My colleagues have the power to overrule me on that and I assume you are requesting them to do so?

MR. LaVAUTE: I am requesting pursuant to the Federal Rules of Appellate Procedure that they reconsider that question.

THE COURT: That is quite proper.

[Transcript of portion of oral argument, pages 7-8.]

. . . .

Thus, the transcript of the oral argument shows that Local 317 preserved, in the Second Circuit, the question of whether Clinton's Ditch violated its commitment to rehire the Local 317 drivers. And, as pointed out in Local 317's Reply Brief, the Second Circuit expressly addressed the issue in its decision (Reply Brief at 3). That issue is properly before this Court.

Respectfully submitted,

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